

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO *ex rel.*
State Engineer, *et al.*,

Plaintiffs,

v.

69cv07941 BB
Rio Chama Adjudication

ROMAN ARAGON, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the State of New Mexico's Motion to Exclude Additional Evidence in Memorandum by *Pro se* Party David Ortiz (Doc. No. 9935, filed August 10, 2010), David Ortiz' Motion to Reconsider and Review Evidence Submitted by Objectors (Doc. No. 9949, filed September 2, 2010) and David Ortiz' Motion to Reconsider; Receive the Evidence, to Modify in Part and the Opportunity to be Heard (Doc. No. 9951, filed September 8, 2010). For the reasons stated below, the Court will **DENY** the Motions.

Procedural Background

The Special Master held evidentiary hearings regarding the priority dates for the Acequias de Chamita, Hernandez and Los Salazares ("the Three Acequias") and filed her Report (Doc. No. 9546, filed December 16, 2009). Some *pro se* parties objected to the Special Master's Report and cited evidence not presented at the evidentiary hearings. The Court granted the State's motion asking the Court to limit its consideration of objections to the Special Master's Report to those filed by persons that timely objected to the Notices and Orders to Show Cause regarding the proposed priority dates, or their successors-in-interest. (See Mem. Op. and Order at 4, Doc. No. 9700, filed April 28, 2010). The Court also granted the State's motion asking the Court to limit its review of

the objections to the Special Master's Report to the evidence and testimony presented to the Special Master at the evidentiary hearings. (*See* Mem. Op. and Order at 3, Doc. No. 9910, filed June 25, 2010).

Pro se party David Ortiz filed two Motions to Reconsider in which he seeks to have the Court review evidence (*See* Joint Amended Objections to the Special Master's Report, Doc. No. 9657, filed March 31, 2010) which was not presented to the Special Master at the hearing in August 1996. (*See* Doc. No. 9949, filed September 2, 2010; Doc. No. 9951, filed September 8, 2010).

Mr. Ortiz also filed a memorandum (Doc. No. 9917, filed August 17, 2010) containing genealogical evidence "to show that as a Parciente who now draws water to irrigate lands off of the Acequia De Chamita, so did his Primos Pobladores forebearers work that Acequia at San Gabriel in 1598." The State then filed its Motion (Doc. No. 9935) to exclude the additional evidence in Mr. Ortiz' memorandum.

The Special Master subsequently found that orders to show cause were not served on water rights owners associated with five subfiles served by the Three Acequias, including subfile 267 (Map/Tract 22.17), and ordered the State to show cause why those owners should not be served with orders to show cause regarding the priority dates for their water rights. (Notice and Order, Doc. No. 9983, filed November 29, 2010). The State requested an extension of time, to February 15, 2011, to respond to the Special Master's Notice and Order "to gather additional information and take the deposition of certain individuals." (Motion for Extension of Time, Doc. No. 9988, filed December 9, 2010; *see also* Order, Doc. No. 9991, filed December 14, 2010 (granting the motion for an extension of time)). After the State files its brief, and after any responses and replies are filed, the

Special Master will file a report with a recommendation regarding service of the orders to show cause. (See Order at 2, Doc. No. 9979, filed November 16, 2010).

Discussion

The docket indicates that David Ortiz is the current owner of subfile 267 (Map/Tract 22:17). (See Objections, Doc. No. 9591, filed February 16, 2010). The forthcoming Special Master's report will recommend whether the subfile owners that were not served orders of show cause, including the owner of subfile 267 (Map/Tract 22:17), should be served with an order to show cause and given the opportunity to offer proof of their priority dates.

The Court will deny the State's Motion to Exclude Additional Evidence in Memorandum by *Pro se* Party David Ortiz (Doc. No. 9935, filed August 10, 2010), David Ortiz' Motion to Reconsider and Review Evidence Submitted by Objectors (Doc. No. 9949, filed September 2, 2010) and David Ortiz' Motion to Reconsider; Receive the Evidence, to Modify in Part and the Opportunity to be Heard (Doc. No. 9951, filed September 8, 2010) as premature. The State and Mr. Ortiz may file objections to the Special Master's upcoming report. *See* Fed. R. Civ. P. 53(f)(2).

IT IS SO ORDERED.



BRUCE D. BLACK
CHIEF UNITED STATES DISTRICT JUDGE